# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

SODEXO AMERICA LLC

and Case 21-CA-39086

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND USC UNIVERSITY HOSPITAL

and Case 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and Cases 21-CA-39328

21-CA-39403

NATIONAL UNION OF HEALTHCARE WORKERS

### SODEXO AMERICA, LLC'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE WILLIAM G. KOCOL DATED APRIL 8, 2011

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Sodexo America, LLC filed its cross-exceptions to the decision of Administrative Law Judge William G. Kocol ("ALJ") decision dated April 8, 2011:

/	/	/	/	/
/	/	/	/	/

1

#### Exception No. 1:

Sodexo excepts to the conclusion at page 3, lines 3-4, of the Decision where the ALJ found that "Sodexo also posted the same rule for its employees working at the Hospital." The case against USC University Hospital involves a 2009 version of the offduty access policy ("Policy"). The case against Sodexo involves a 2008 version of the Policy. There is no factual support for the findings that Sodexo posted the 2009 version of the Policy. Moreover, the parties' stipulation does not state that Sodexo posted the Policy or to whom the posted Policy was directed. (SEE, Answering Brief at 2-3; GC. Ex. 2).

#### Exception No. 2:

Sodexo excepts to the portion of the Decision (page 3, lines 9-17; T 22-70) that discusses the business justification for the Policy. These cases involve access by off-duty employees to the interior of the Hospital. The ALJ's finding of a sufficient business justification for is fully supported by the evidence. The cases here involve access by off-duty employees to the interior of the Hospital. Under *Tri-County Medical Center*, 222 NLRB 1089 (1976), there is no need to establish a business justification for an off-duty access rule that applies to the interior of the facility. A business justification is required where application of the off-duty access rule applies to parking lots, gates, and other outside nonworking areas. (SEE ANSWERING BRIEF AT 6-7).

#### Exception No. 3:

Sodexo excepts to that portion of the Decision at page 4,lines 49-51, where the ALJ concluded that a supervisor saw Hospital employee Julio Estrada picks up his paycheck when he was not scheduled to work. No testimony was presented as to the supervisory status of Victor Perez, the so-called supervisor. (GC. BRIEF AT 4). The factual support for the ALJ's finding is an admission made by the Hospital. Sodexo, in its

answer, denied that Perez was a supervisor or an agent of the Hospital. The Hospital's admission is not binding on Sodexo and, therefore, as to Sodexo, there is no factual support the factual finding and legal conclusion that Perez was a supervisor. (SEE Answering Brief at 7-8).

DATED: June 10, 2011

Respectfully submitted,

MARKS, GOLIA & FINCH, LLP

Attorneys for Sodexo America LLC

860.080/3114440.bdp

#### UNITED STATES OF AMERICA

#### BEFORE THE NATIONAL LABOR RELATIONS BOARD

#### Region 21

SODEXO AMERICA LLC

and Case 21-CA-39086

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND USC UNIVERSITY HOSPITAL

and Case 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and Cases 21-CA-39328

21-CA-39403

NATIONAL UNION OF HEALTHCARE WORKERS

## PROOF OF SERVICE VIA ELECTRONIC MAIL AND/OR OVERNIGHT EXPRESS

#### I, Brandi D. Paape declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California; where the mailing occurs; and my business address is 8620 Spectrum Center Boulevard, Suite 900, San Diego, California 92123-1489. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with overnight mail and/or electronic mail pursuant to which practice the correspondence will be deposited with overnight or electronic mail this same day in the ordinary course of business. I caused to be served the

following document(s): SODEXO AMERICA, LLC'S CROSS-EXCEPTIONS TO

#### THE DECISION OF THE ADMINISTRATIVE LAW JUDGE WILLIAM G.

**KOCOL DATED APRIL 8, 2011**, by placing either a copy thereof in a separate overnight envelope or by electronic mail for each addressee listed as follows:

#### **VIA ELECTRONIC MAIL**

Linda Van Winkle Deacon, Esq. Bate, Peterson, Deacon, Zinn & Young 888 South Figueroa Street, Suite 1500 Los Angeles, California 90017 T: 213-362-1860

F: 213-362-1861

e-mail: <a href="mailto:ldeacon@bpdzylaw.com">ldeacon@bpdzylaw.com</a>

#### VIA ELECTRONIC MAIL

Alice Garfield, Region 21 National Labor Relations Board 888 South Figueroa Street, Ninth Floor Los Angeles, CA 90017-5449 T: 213-894-3011

T: 213-894-3011 F: 213-894-2778

E-mail: <u>alice.garfield@nlrb.gov</u>

#### **VIA OVERNIGHT MAIL**

SEIU-United Healthcare Workers-West 5480 Ferguson Drive Los Angeles, CA 90022

#### **VIA OVERNIGHT MAIL**

Service Workers United 275 Seventh Avenue, 10th Floor New York, NY 10001

#### **VIA ELECTRONIC MAIL**

Ms. Patricia Ortega 2107 Common Wealth Avenue, Apt. D-369 Alhambra, CA 91803

e-mail: opatricia491@gmail.com

#### VIA ELECTRONIC MAIL

Florice O. Hoffman, Esq. Law Offices of Florice Hoffman 8502 East Chapman Avenue, #353 Orange, California 92869 T: 714-282-1179

F: 714-282-7918

E-mail: <u>fhoffman@socal.rr.com</u>

#### **VIA OVERNIGHT MAIL**

Antonio Orea National Union of Healthcare Workers 8502 East Chapman Avenue, Suite 353 Orange, CA 92869

#### VIA ELECTRONIC MAIL

Bruce A. Harland, Esq. Weinberg, Roger, & Rosenfeld 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501

Alameda, CA 94501 T: 510-337-1001

E-mail: bharland@unioncounsel.net

 I then sealed the overnight envelope(s) and, either deposited it/each with overnight mail or electronically served it/each for collection and mailing on June 10, 2011 at San Diego, California, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 10, 2011.

BRANDI D. PAAPE

860.080/POS.bdp